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**OCT 14 2004**

**OFFICE OF PETITIONS**

In re Application of  
Al Uzumcu et al.  
Application No. 10/791,671  
Filed: March 2, 2004  
Attorney Docket No. 035568-0127

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: **DECISION REFUSING STATUS**  
: **UNDER 37 CFR 1.47(a)**  
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This is in response to the petition filed under 37 CFR 1.47(a) on September 17, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 2, 2004, without an oath or declaration. Accordingly, a Notice to File Missing Parts was mailed May 21, 2004 requiring inter alia, an executed oath or declaration, filing fees and a surcharge for their late filing.

In response, an oath or declaration naming Al Uzumcu, Scott Adler, Brian Albrecht and Timothy Baker as joint inventors was filed with the instant petition and a request for a two month extension of time. The declaration was signed by all joint inventors except Mr. Uzumcu, The present petition seeks status under 37 CFR 1.47 claiming that joint inventor Uzumcu refuses to execute the declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the complete application (specification, including claims, drawings, if any, and the

declaration) was sent to the non-signing inventor.

A statement made by the attorney of record, Victor Henzi, indicates that on two separate occasions, the declaration and power of attorney were sent, under his direction by Administrative Assistant Debra Sykes, to Mr. Uzumcu, that a telephone message by Mr. Uzumcu confirmed his receipt of same and that in a follow-up conversation, Mr. Uzumcu advised that he would not be signing the declaration for the above identified application. The evidence presented however is not sufficient to show that Mr. Uzumcu had the benefit of reviewing the application, thus the requirements for status under 37 CFR 1.47(a) have not been met.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

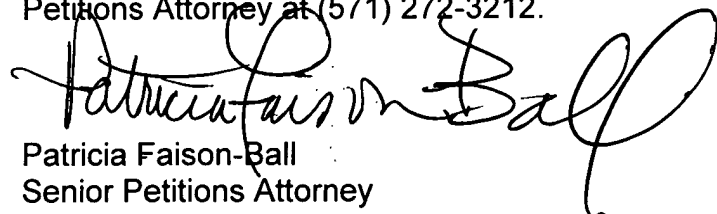
Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By fax:                        (703) 872-9306  
                                    ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

  
Patricia Faison-Ball  
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Office of Petitions